

1712464 (Migration) [2018] AATA 2910 (26 June 2018)

DECISION RECORD

DIVISION:	Migration & Refugee Division
CASE NUMBER:	1712464
MEMBER:	Robert Wilson
DATE:	26 June 2018
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision to cancel the applicant's Subclass 100 (Spouse) visa.

Statement made on 26 June 2018 at 1:35pm

CATCHWORDS

Migration – Cancellation – Partner (Migrant) (Class BC) – Subclass 100 (Spouse) – Federal Magistrates Court remittal – Non-compliance – Changes in circumstances to be notified – Genuine spousal relationship – Whether decision to grant visa based on incorrect information – Date that relationship with visa sponsor ceased – Contradictory evidence from applicant and witness – Witness credibility – Cancellation of a visa held by another person due to being a member of the same family unit – Best interests of children – International obligations – Stigma against divorced women – Decision under review affirmed

LEGISLATION

Migration Act 1958 (Cth), ss 5, 5F, 78, 99, 100, 101, 102, 103, 104, 105, 107, 109, 116, 131, 133F, 137L, 137N, 140, 189, 198, 417

Migration Regulations 1994 (Cth), rr 1.15A, 2.41

CASES

Cao v Minister for Immigration [2007] FMCA 225

1. *Jasbeer Singh v Minister of Immigration and Ethnic Affairs* [1994] FCA 1534 at [48]

MIAC v Khadgi (2010) 190 FCR 248

QAAH v Minister for Immigration & Multicultural & Indigenous Affairs [2005] FCAFC 136

2. *Tarasovski & ors v MILGEA* [1993] FCA 515

3.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 378 of the Migration Act 1958 and replaced with generic information.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

4. This is an application for review of a decision made by a delegate of the Minister for Immigration to cancel the applicant's Subclass 100 (Spouse) visa under s.109(1) of the *Migration Act 1958* (the Act).
5. The delegate cancelled the visa on the basis that the visa holder had not complied with ss.104(1) and (2) of the Act because she failed to inform the Department of Immigration (the Department) of her change in circumstances prior to her second-stage permanent Subclass 100 (Spouse) visa grant. The visa holder's (applicant's) ended relationship with her former husband [Mr B], or at least the fact she was not in a genuine and continuing relationship and a mutual commitment to a shared life as a married couple to the exclusion of all others with [Mr B], were material at the time in deciding the grant of her visa. The delegate considered that had the Departmental officer known the circumstances at the time of deciding her visa application, the applicant would not have been granted a Subclass 100 (Spouse) visa on 1 September 2014. The issue in the present case is whether that ground for cancellation is made out, and if so, whether the visa should be cancelled.
6. The matter is before the current second Tribunal because on 6 June 2017 the Federal Magistrates Court ordered that the matter be reconsidered.
7. The applicant, [Ms A], appeared before the current Tribunal on 13 December 2017 to give evidence and present arguments. The Tribunal also received oral evidence from [Mr C], [Mr D], and [Ms E]. The Tribunal hearing was conducted with the assistance of an interpreter in the Bengali and English languages.
8. The applicant was represented in relation to the review by her immigration lawyer who attended the Tribunal hearing.
9. For the following reasons, the Tribunal has concluded that the decision to cancel the applicant's visa should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

10. Notification of Intention to Consider Cancellation

11. On 23 December 2015, the Notice of Intention to Consider Cancellation (NOICC) was sent to [Ms A]. The NOICC provided information including, but not limited to, the following.
12. In the visa application form the applicant provided answers to these relevant questions, providing information about her spousal relationship with the sponsor.
13. On the Form 47SP - Application for migration to Australia by a partner, signed by the applicant on 25 June 2012, the applicant provided the following information.
14. At question 66, when asked when and where she and her fiancé or partner first met, the applicant stated that the date was 4 May 2012 and the place was her parents' house.
15. At question 69, when asked when and where the applicant began a married or de facto relationship with her fiancé or partner, the applicant stated that the date was 12 May 2012 and the place was her parents' house.

16. On the Form 40SP - Sponsorship for a partner to migrate to Australia, signed by the sponsor on 25 June 2012, the sponsor provided the following information.
17. At question 10, when asked how he and his fiancé or partner met, the sponsor stated that he was 'introduced by friend.'
18. At question 31, which asked for the address for correspondence, the sponsor stated: [Address 1].
19. Further information in the NOICC is as follows.
20. In support of the applicant's partner visa application the parties provided a Nikah Nama stating that the parties married on 12 May 2012. On 17 December 2012, [Ms A] was granted a Subclass 309 (Spouse) visa and on 31 December 2012, she entered Australia as the holder of that visa.
21. On 30 April 2014, [Ms A] provided information in support of the Subclass 100 (Spouse) visa application including individual statutory declarations provided from [Ms A] and [Mr B].
22. On 1 September 2014, [Ms A] was granted the Subclass 100 (Spouse) visa by the Department.
23. On 12 March 2015, [Mr C] stated that he and [Ms A] married on 5 February 2015.
24. On 12 November 2015, [Mr C] provided the Department with a copy of the divorce document for [Ms A] and [Mr B], issued by Bangladeshi authorities on 10 September 2014. In the document, [Mr B] states as his reason for divorcing the applicant as being 'reason of not agree of having co-habitation with me as wife'.
25. The Department's system also showed that [Mr B] departed Australia on 7 May 2014 (a week after the applicant lodged the application for the Subclass 100 visa on 30 April 2014) and did not return to Australia until 4 November 2014. The Subclass 100 (Spouse) visa was granted on 1 September 2014.
26. Other information is that [Ms A], [Mr B] and [Mr C] shared the address of [Address 1] as detailed below:
 - From 22 February 2012 until 8 July 2015, it was [Mr C]'s nominated address.
 - From June 2012 until March 2015, it was [Mr B]'s nominated address.
 - From 31 December 2012, it was [Ms A]'s nominated address.
 - On 23 December 2013, [Mr B] and the applicant had a six month lease for (house number omitted) [Address 2].
27. Other information is a notice of inspection dated 11 September 2014, for [Mr B] providing [Address 2].
28. Having regard to the above information, the following is established.
29. [Ms A], the applicant, married [Mr B] in Bangladesh on 12 May 2012. [Mr B] divorced the applicant on 4 January 2015. The applicant married [Mr C] on 5 February 2015 in [City 1].

30. [Mr C] and the applicant started their relationship from February-March 2014, which is prior to 1 September 2014 when the applicant was granted the Subclass 100 (Spouse) visa.
31. The applicant did not notify the Department of these changes and as a result, she did not comply with ss.104(1) and (2) of the Act in the way described in the s.107 notice.

32. **Response to the NOICC**

33. On 5 May 2016, the applicant, via her representative, responded to the NOICC. The information included, but was not limited to, the following: the applicant's relationship with [Mr B] was genuine and continuing until he divorced her on 10 September 2014. She first met [Mr C] in February-March 2014; however, the first time they talked to each other was November 2014. On 5 February 2015, [Mr C] and the applicant married. On [date of birth deleted], a son to the applicant and [Mr C] was born. When [Mr C] was interviewed by the Department he requested an interpreter but he was not provided one, and his English is not good. In addition, [Mr C], having worked night shift, was tired, felt stressed, did not fully understand the questions put to him and he gave wrong answers. He first talked to the applicant in November 2014. [Mr D] stated that the relationship between the applicant and [Mr B] was genuine. He confirmed that the applicant and [Mr C] are married and have a son. Also provided is a document addressed to [Mr B] at [Address 2].
34. The applicant's representative stated that the applicant and [Mr B] were in a genuine spousal relationship when the Subclass 100 visa was granted on 1 September 2014. There is an Australian citizen child. Approximately 12 days after the applicant declared her love for [Mr B], and [Mr B] and the applicant stated they cannot live separately or apart from each other, [Mr B] departed Australia. He filed for divorce and [Ms A] and [Mr B] divorced on 10 September 2014.
35. The parties were stating they cannot be separated, yet one week after the statement the sponsor departed Australia and applied for divorce. The sponsor claimed that the reason for divorce is that the applicant did not agree to cohabitation with him, as his wife. Different evidence, provided by [Mr C], is that he had been in a relationship with the applicant since February-March 2014. [Mr C]'s explanation was that he provided this information to the Department as a result of his poor English, the lack of an interpreter, and the fact he was tired and stressed.

36. **Consideration**

37. [Ms A], in her statutory declaration dated 23 April 2014, stated, 'Since we get married we know each other very well. We found we care for each other very much. We cannot live separate from each other. We love each other from our heart. Our relationship is genuine and long-life'.
38. The applicant's solicitor wrote on 5 May 2016 that the statutory declaration above is an unsworn statement and it is not corroborated by any other independent information.
39. Firstly, in response, in [Mr B]'s statutory declaration which was signed by him, he wrote, 'I can't live apart from my wife. I love my wife from my depth of my heart, I had a very beautiful family and feelings, care for each other'.
40. Furthermore, in his statutory declaration, [Mr B] declared on 23 April 2014, in the first paragraph the pro-forma typed words: 'That I have a mutual dependent commitment to a shared life as husband and wife, or a de facto partner, or as an interdependent partner, to the exclusion of all others, with [left blank]'.

41. At paragraph 2, the following pro forma typed words are included, 'That our relationship is genuine and continuing'.
42. Further, the Tribunal refers to s.99 of the Act:
43. **99 Information is answer**
44. Any information that a non-citizen gives or provides, causes to be given or provided, or that is given or provided on his or her behalf, to the Minister, an officer, an authorised system, a person or the Tribunal, or the Immigration Assessment authority, reviewing a decision under this Act in relation to the non-citizen's application for a visa is taken for the purposes of section 100, paragraphs 101(b) and 102(b) and sections 104 and 105 to be an answer to a question in the non-citizen's application form, whether the information is given or provided orally or in writing and whether at an interview or otherwise.
45. The statutory declaration is located in a Department file, [number deleted](ff.109-111). It is next to [Mr B]'s 'Statutory Declaration – Partner Visa (Sponsor)' (ff.112-114) dated 23 April 2014.
46. The Tribunal finds that the applicant's statutory declaration constitutes an answer on her visa application form, having regard to the terms of s.99 above.
47. The Tribunal has considered the applicant solicitor's submission that the statutory declaration is unsworn; however, it finds that despite this the statutory declaration is information for the purposes of s.99 and that it is an answer given by [Ms A] to a question on her application form.
48. Importantly, the information that the applicant has provided in her 'statutory declaration' may not be considered as an effective statutory declaration because it has not been signed, but as a document itself, the Tribunal ascribes to it substantial weight.
49. The Tribunal has also applied s.99 to a corroborative typed statement referred to as 'The statement regarding history of relationship with my husband [Mr B]', signed by the applicant with an annexure stamp, dated 10 November 2012, which has been witnessed by [a Notary Public in Bangladesh] [District 1, Bangladesh]. There is also another stamp which repeats some of that information. There is also a red seal on the document.
50. The relevant part of the statement is where the applicant said, 'I am now waiting for Australian visa to join my husband to live with him permanently in Australia. We are in a loving relationship and intend to live together permanently'.
51. The Tribunal has put a great deal of weight on this corroborative evidence about [Ms A] and [Mr B] intending to live together permanently.
52. **Information provided to the second Tribunal, at the hearing held on 13 December 2017**
53. The applicant first met her first husband, [Mr B], in the marketplace at Shylet in Bangladesh after she returned from Australia. This was 7 to 10 days before her marriage to him in Bangladesh on 12 May 2012. In this regard, a Nikah Nama and a Marriage Certificate have been provided which confirms the above.
54. The Tribunal asked when the applicant first met her second husband, [Mr C]. The applicant said from the end of November 2014, in [City 1]. The Tribunal asked if she had met [Mr C]

before in Bangladesh. She said, no. He was not living in Bangladesh. He left Bangladesh 13 to 14 years previously.

55. The applicant married her current husband, [Mr C] on 5 February 2015 in his sister's residence in [Suburb 1] in [City 1].
56. They started their relationship after their marriage.
57. Her previous husband's close friend is [Mr D], and [Mr D]'s wife, [Ms E], is the applicant's close friend. With [Mr D], the applicant went to the Bangladeshi shop in [Suburb 2], a suburb of [City 1]. So the applicant sometimes went with [Mr D] to that [Suburb 2] shop, and the applicant's husband used to live upstairs over that shop in bachelor accommodation. That is how she met him and continued meeting him._
58. The Tribunal asked when that first meeting developed into something more like a romantic liaison. She said he was asking her about her personal information and she told him that she was divorced and from there, an emotional relationship grew up slowly.
59. The Tribunal asked the applicant to talk about when she started to get involved in a deeper relationship with [Mr C]. She said when he was starting to ask about her personal life she explained to him about the situation and she told him that she did not have a husband at the time, as she was divorced. She was also vulnerable at that time and he was proposing that if she did meet someone and someone offered her to get married then would she agree. She said, 'Yes, I will agree.' From there the relationship went deeper.
60. The Tribunal asked when she and her first husband divorced. She said the letter was written on 10 September 2014. The Tribunal said there is another one which said 4 January 2015. She said she received the first letter for the notice of divorce on 10 September 2014, and then the finalisation letter was on 4 January 2015.
61. The Tribunal asked when she notified the Department that she was no longer in a spousal relationship with [Mr B]. She replied that when he divorced her she was shocked and she did not realise that she had to notify of the breakup of the relationship to the Department. Her brain was not working, so now she cannot remember the date.
62. The Tribunal asked if she remembered when the Subclass 100 (Spouse) visa was granted to her. She asked whether the Tribunal meant the time she got her permanent residency in Australia. The Tribunal asked the representative if he could help. He said it was granted on 1 September 2014.
63. The Tribunal asked the applicant if she notified the Department of her spousal relationship with [Mr C]. She stated, 'Yes.' The Tribunal asked if she knew when that letter was sent. She replied, 'After my wedding.' Then her second husband submitted the marriage certificate to the Department.
64. The applicant stated that she married her second husband on 5 February 2015 at [Suburb 1].
65. After her wedding, she has been living continuously with her husband, and she has two children with him. Her eldest is [Child 1], born [Date of birth deleted], and [Child 2] born [Date of birth deleted].
66. After the applicant was no longer living with her first husband and before she married her second husband, she did not do any paid work. She was vulnerable. She was helpless

mentally. She wanted to be socialised with people and she went to the park and made friends.

67. The applicant was living in a unit in [Suburb 2]. No one else lived in the unit. After her divorce there was no one to help her except a friend of her previous husband, who is named [Mr D]. This was after her divorce and extended until the second marriage. Her first husband did not try to get her back because they were divorced.
68. When the applicant was married to [Mr B], she was living [at Address 2].
69. After her wedding to [Mr C], the applicant lived for a few days with her current husband's sister. She then took accommodation at [Address 3], and she has been living there constantly. That is her current address. At the time of the Tribunal's hearing, she has been living with her second husband, [Mr C], and their two children.
70. The representative asked for clarification of the relationship between [Mr D] and [Mr C] and [Ms E]. The applicant stated that [Ms E] is the sister of [Mr C], and she is the wife of [Mr D]. There is no family relationship between [Mr C] and [Mr D].
71. The following evidence was taken from [Mr C] at the Tribunal hearing.
72. He is the husband of the applicant.
73. The Tribunal asked when he first met his wife. He said he first saw her in February 2014, but he spoke to her in November 2014. This was in [Suburb 2]. He has not gone to Bangladesh for many years.
74. The Tribunal asked how the relationship developed between him and his wife. He said that he saw her in [Suburb 2] and then he spoke to her and continued to speak to her. The emotions grew and that is how the relationship developed.
75. The Tribunal asked [Mr C] whether the applicant was married at this stage. He said she had a marriage before. The Tribunal asked whether she was divorced. He said that when he married her, she was divorced.
76. The Tribunal asked [Mr C] whether [Mr B] divorced the applicant on 4 January 2015. [Mr C] responded that he, [Mr C], married the applicant on 5 February 2015.
77. [Mr C] was asked where he and his wife lived together. He stated that they lived at [Suburb 1] for more than three months. In November 2015 they left this accommodation and they rented accommodation at [Address 3]. Their children are there with them.
78. [Mr C] stated that when he met his second wife to be, he spoke to her. The first time, they did not say anything about divorce, but in the course of time the applicant opened up and told him.
79. The Tribunal asked whether he knew his wife while in Bangladesh prior to coming to Australia. He said, 'No'; he did not know her at that time. He left Bangladesh in 2003 and did not go back. They came from the same village.
80. The Tribunal asked whether they saw each other in the village, whether they went to the same school and whether he knew her family in Bangladesh. He stated that he used to know her father, who was from his village.

81. [Mr C] stated that his marriage was not an arranged marriage. He was involved with the applicant after speaking to her. Then he let her parents and his family know about the matter.
82. [Mr C] stated that he came from [District 1, Bangladesh].
83. The Tribunal asked [Mr C] whether his wife advised the Department about his marriage to her. He said, 'Yes, I provided a marriage certificate as well'.
84. The Tribunal asked if [Mr C] ever lived at [Address 1]. He replied that this was his sister's house, but he used it as a place for his postal address. He lived elsewhere, above a shop in bachelors' accommodation.
85. The Tribunal referred to the allegations made in the previous Tribunal's invitation to comment made on 30 August 2016, regarding what he is alleged to have said to the Department.
86. The Tribunal asked [Mr C] whether it is true that on 19 September 2014, he said that he was in a relationship with his wife, the applicant, for the past three to four months and that they had been friends for one year prior to this period.
87. He stated that he had never said these things. His English was limited at that time and he asked for an interpreter over and over again, but an interpreter had not been provided. Then he complained to his lawyer that they were not giving him an interpreter. They did not provide him with an interpreter. He said he used to work as a night-shift worker at [Occupation 1]. He got less sleep and could not remember things well. At present he is doing moderately well, but he is not physically doing well. He [suffers from a medical condition] from time to time and his doctor asked him to do a [scan], which has been done. It was then forwarded to a specialist doctor. That result was sent to another specialist and they will get the report on 15 January 2018.
88. The Tribunal referred to the invitation to comment on the following. On 21 November 2014, [Mr C] declared that he and the applicant had not lived together as they were not married and their families were in the process of discussing the marriage between them.
89. At the hearing, [Mr C] stated that he was asked about a question, 'How long have you known this girl [his wife]?' Then he said, 'I have spoken to my wife in November 2014 and that matter has gone to the family level'.
90. The Tribunal asked if that meant that they had children or if his parents were talking to her parents. He said he did not have any children at that time, and he was talking to his family.
91. The Tribunal stated that it was its understanding that the applicant was recently divorced from her (first) husband who had gone back to Bangladesh.
92. The Tribunal referred to the invitation to comment on the following. In January 2015, [Mr C] stated that he was not residing with his second wife. He provided a tax invoice dated 17 January 2014 addressed to his home at [Address 1]. He said, 'Yes, I used that as my postal address'.
93. The Tribunal asked why he did that. He said that he lived above a shop, and there was no postbox. He had bunk bed accommodation with 10–15 other people in the premises.
94. The Tribunal referred to the invitation to comment on the following. On 9 April 2015 [Mr C] declared that he was still living with his wife, [Ms A]; his sister, [Ms E] and his brother in law, [Mr D], at [Address 1].

95. At the Tribunal hearing, [Mr C] said that was not correct. After his wedding, he lived for a few months in his sister's accommodation at [Address 4]. Then, after that, he had his own accommodation at [Address 3].
96. The Tribunal asked why he declared that he was still living with his wife, his sister and brother-in-law at [Address 1]. The Tribunal asked why he would put that in a document, if it is not true. He said he did not understand the question, his English was limited and there was no assistance of an interpreter.
97. [Mr C] stated that after the wedding he lived with his wife in his sister's house at [Address 4], for more than four months.
98. [Mr C] had declared his addresses as follows: 6 July 2009 – 5 June 2015:[Address 5]. [Mr C] said at this time he did not even come to Australia. This line of questioning was not pursued further.
99. The representative suggested that the Tribunal ask [Mr C] about the purpose and duration of those so-called interviews with the Department. The representative stated that at one point the Tribunal had suggested he might have signed a statutory declaration, but in fact, he should be asked why he was speaking to the Department on those occasions, and how long they lasted. There was a particular purpose for those meetings.
100. The Tribunal asked the applicant if he could tell the Tribunal the purpose and duration of the meetings he had with the Department.
101. He stated that he had a visa period and when the visa period expires, the Department would ask him to go there, and he was asked a lot of questions. They would then take him to a separate room, and he would be asked questions after questions. This was in [City 1]. The interviews were over an hour most times, but very rarely they were 40-50 minutes. He said that interpreter assistance was not there on any single day.
102. The Tribunal asked [Mr C] how often he thought he had gone to these interviews. He stated that the duration of his visa periods was 1-2 months. After this, when he finished his visa period, the Department always called him.
103. The representative indicated that they had provided a copy of [Mr C]'s old passport that morning just to show that he was, except for a period of 8- 10 days only, away from Bangladesh since 2003 in South Africa and Dubai before arriving in Australia. The Tribunal asked the representative that when he was away from Bangladesh what was the issue? The representative stated this was to show that he was not in Bangladesh, except for a few days in 2003.

104. Evidence at the Tribunal from [Mr D]

105. [Mr D] said he got involved as [Mr C] is [Mr D]'s wife's brother. Further, the former husband ([Mr B]) was a long-time friend of [Mr D].
106. The witness said [Mr B], was married. After that, the witness heard the news of her divorce and the witness was being supportive to her in Australia. She stayed at his place for two and a half to three months, at [Address 4]. She was crying and talking to the witness' wife after the divorce. When [Mr B] gave her the divorce letter, she was staying in her own accommodation, but she came back to the witness and his wife and she broke down with tears and was vulnerable at that stage. The witness offered his financial support and help.

107. She stayed with him in February or March or April in 2014 or 2015. The applicant married [Mr C], her second husband. The applicant and the second husband took their own accommodation after some time.

108. The witness does not know how the applicant was when she remarried, but they came to know.

109. Evidence at the Tribunal from [Ms E]

110. [Ms E] is the wife of [Mr D].

111. The witness said after arriving in Australia, the applicant needed a friend and sometimes she used to come to the witness' house.

112. Then, when the applicant received the divorce letter, they talked to each other over the phone. The witness asked her to come to her house and she came.

113. The applicant told the witness the outcome of her divorce and she was very upset and the witness could not give the applicant enough comfort. The witness said that she does not know why the divorce took place, just that the applicant told her.

114. The witness' brother told her that he had met the girl and had spoken to her and had made the decision to marry her. The witness told him to go ahead with that decision if he liked her.

115. The Tribunal asked the witness if she could tell the Tribunal when and where the applicant and the second husband met. She said that she is a housewife and she did not know much about this, she just stays at home with the children.

116. The Tribunal asked whether the witness' brother was interested in the applicant at any time before the divorce. She replied, no, she did not know about all this. She was only told from him that he had found a girl and he wanted to marry her.

117. The witness said that she asked her brother whether the girl was legal or not, regarding her immigration status in Australia. He then replied that she was legal, so the witness said to him to go ahead.

118. Submissions by the representative at the Tribunal

119. Regarding the timeline, it is important that the Subclass 100 visa was granted on 1 September 2014, and so, after that date there was no obligation on the applicant to notify of any circumstances that changed after that. So she was not obliged to notify that she had been informed of the divorce and she was not obliged to notify that she had married [Mr C], although of course, they did, because for his visa application they wanted to do that. It is only then a question of whether the Tribunal thinks that there was a relationship between the current husband and the applicant before the divorce. Really, the only piece of evidence indicating that is the report which we now have at about third hand, of what [Mr C] is supposed to have said at that interview in September 2014: that he had been in a relationship with her since February 2014.

120. The representative stated that it is their submission that this does not come up to the standard that is needed in a case like this. This was an interview that he had to go to every few months to renew his visa because he had in fact had an application for Ministerial intervention and the visas are only given one for a month or two months, and he was tired and did not have an interpreter.

121. Apart from that, all the evidence is that they did not, in fact, form any source of relationship until after the divorce, according to the representative. On those grounds, there simply is not a ground for cancellation. But, if the Tribunal finds there is, then they will argue that the interests of the children, obviously in particular, the older child, (who is an Australian citizen, because he was born before her visa was cancelled) and also the younger child who is not a citizen, are best served if the children are allowed to grow up in this country, and have the advantages of the birthright of being an Australian citizen (in the case of the older child).

122. Consideration of evidence regarding the divorce

123. A 2004 report by the Center for Reproductive Rights discusses marriage and divorce laws in Bangladesh. This states that 'there are several variants of divorce that are technically recognised in the *Sharia*. These include *talaq* (unilateral action by the husband), *mubarat* (mutual consent) and *khula* (at the initiation of the wife, provided that she agrees to forego her financial rights, such as her dower)'. The report states that in Bangladesh 'the Muslim Family Laws Ordinance regulates the procedure for seeking a divorce. Under the ordinance, men may seek divorce by pronouncing *talaq* and giving written notice to the chairman of the union *parishad* or other appointed official and a copy to his wife. The chairman is then bound to constitute an arbitration council charged with the task of attempting reconciliation between the parties. If such efforts fail, divorce is generally effective after *iddat* – a three-month period that must pass before the divorce becomes effective – or, if the wife is pregnant at the time of *talaq*, at the end of her pregnancy, whichever occurs later.¹
124. The relevant evidence in this regard, the Notice Form On Deed Of Divorcement (by husband to wife), was signed by [Mr B] on 10 September 2014. The document states, 'Due to reason of not agree of having cohabitation with me as wife.' The document also indicated that, 'I have divorced (1/2/3 & Bain Talaq) my wife [Ms A], in presence of above witnesses'.
125. This evidence indicates that [Mr B] divorced his then wife by *talaq*, that is, the unilateral action by [Mr B] on 10 September 2014.
126. There was no reconciliation and the Tribunal finds that *iddat* followed for some time over three months, and then a Bangladeshi divorce certificate with a date of issue of 11 January 2015 (and a date of registration of 4 January 2015) has been provided.
127. Further, the divorce certificate referred to above has been signed by a Muslim Marriage and Divorce Registrar in [District 1], Bangladesh, and it is dated 11 January 2015.
128. Furthermore, there is also a reference in [Ms A]'s statutory declaration sworn on 4 May 2016 that [Ms A] and [Mr B] were divorced on 10 September 2014. This is also referred to in the Notice Form on Deed of Divorcement. The Tribunal finds that this form of divorce is recognised in the Koran, and the divorce took place on 10 September 2014.
129. This date is supported by the applicant's evidence. In this regard, in her statutory declaration declared on 4 May 2016, the applicant wrote that her previous relationship with [Mr B] was genuine and continuing until the date her ex-husband divorced her in Bangladesh on 10 September 2014. Evidence to the Tribunal supported that the first letter of notice of divorce was 10 September 2014.
130. Further, on 12 November 2015, [Mr C] provided the Department with a copy of the divorce document for [Ms A] and [Mr B], issued by Bangladeshi authorities on 10 September 2014.

¹Center for Reproductive Rights, 'angladesh'in *Women of the World: Laws and Policies Affecting Their Reproductive Lives- South Asia*, 1 June 2004, pp 223-224
https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/pdf_wowsa_srilanka.pdf

In the document, [Mr B] states his reason for divorcing the applicant as being 'reason of not agree of having co-habitation with me as wife.'

131. The Tribunal accepts this evidence and finds the divorce took place on 10 September 2014.

132. Further evidence

133. The applicant said she met [Mr C] from the end of November 2014 in [City 1]. However, in her statutory declaration declared on 4 May 2016 she wrote that she met [Mr C] in February/March 2014, but at the time they did not talk to each other. They met a few times after that and still they did not talk. She wrote that they first talked to each other in November 2014. The Tribunal has doubts concerning the credibility of this evidence, in particular that they met but did not talk to each other for nine months or so.

134. On 19 September 2014, the applicant's current partner, [Mr C] was interviewed on the first occasion by '[Ms F]' as part of a Community Status Resolution process. There were 10 interviews in all, the last taking place on 26 August 2015. [Mr C] stated that since February-March 2014 he had been in a relationship with the applicant. In addition, he stated that the parties had been friends for one year prior to this time as the parties are from the same village in Bangladesh.

135. Supporting [Mr C]'s evidence above is that according to the applicant's and [Mr C]'s marriage certificate dated 5 February 2015, they both list their place of birth as [District 1], Bangladesh. This adds weight to the claim that they are from the same village and as a result, that they had been friends for a year, and that he had been in a relationship with the applicant. The Tribunal puts weight on this information.

136. The applicant married her current husband, [Mr C], on 5 February 2015 in his sister's residence in [Suburb 1] in [City 1].

137. The Tribunal asked the applicant at the hearing, when she notified the Department that she was no longer in a spousal relationship with [Mr B]. She replied that when he divorced her, she was shocked and did not realise she had to tell the Department. Her brain was not working and she cannot remember the date.

138. However, at the Tribunal hearing the Tribunal asked when she notified the Department of her spousal relationship with [Mr C]. She replied that after the second wedding, her husband submitted a marriage certificate to the Department.

139. Having regard to the previous inconsistencies, the Tribunal does not place much weight on this response.

140. The Tribunal asked why the applicant married [Mr C] (on 5 February 2015). She stated after her wedding, she has been continually living with her husband. She has two children, [Child 1] and [Child 2]. The second husband is the father of both children.

141. The Tribunal asked the applicant when the Subclass 100 (Spouse) visa was granted to her. The applicant's representative responded with the reply: 1 September 2014.

142. The Tribunal asked the applicant when she was no longer living with her first husband, what she did before she married her second husband. She said that she did not do any paid work. She was vulnerable. She went to the park and made friends. She was living [at Address 2], in a unit.

143. The Tribunal asked if anyone else was left in the unit. The applicant replied, 'No'. The Tribunal asked who was paying for it. She said after her divorce there was no one to help her, but a friend, [Mr D], moved in. The Tribunal asked whether he helped her with money or helped her in any other way what his role was. She said she received help from him after her divorce. She stated that this situation extended with [Mr D] until her second marriage. He was a friend of her previous husband. The Tribunal asked the applicant whether her first husband tried to get her back. She said no, because they were divorced.
144. The Tribunal asked where the applicant lived with [Mr B]. She stated, 'In [Address 2].'
145. The Tribunal asked where she lived with [Mr C]. She said after her wedding she lived for a few days with her current husband's sister and then took her accommodation at [Address 3]. At the time of the hearing, that was still her current address. No one else is living at that address. She is living with her second husband with her children. The Tribunal asked how long she has been living there. She stated after her wedding she lived there constantly.
146. **The applicant's legal representative provided the following submission dated 8 December 2017:**

147. **Grounds for cancellation**

148. It is submitted that there is no ground for cancellation in this case.

149. The ground that is alleged is a failure to comply with the obligation set out in s 104(1) of the Act:

150. If circumstances change so that an answer to a question on a non-citizen's application form or an answer under this section is incorrect in the new circumstances, he or she must, as soon as practicable, inform an officer in writing of the new circumstances and of the correct answer in them.

151. In the case of a visa granted in Australia, this obligation applies only to changes in circumstances occurring before the visa grant.

152. From the delegate's decision it appears that the answer that is alleged to have become incorrect before grant of the visa was that [Ms A] was the spouse of the sponsor, [Mr B]. The term "spouse" is defined in s 5F to mean a person who is in a "married relationship" with another person, meaning:

153. (a) *they are married to each other under a marriage that is valid for the purposes of this Act; and*

154. (b) *they have a mutual commitment to a shared life as husband and wife to the exclusion of all others; and*

155. (c) *the relationship between them is genuine and continuing; and*

156. (d) *they:*

157. (i) *live together; or*

158. (ii) *do not live separately and apart on a permanent basis.*

159. It is submitted that all of these criteria were satisfied at 1 September 2014.

160. At the date of the decision to grant the subclass 100 visa, [Ms A] and [Mr B] were still married under a marriage that had been recognised as valid in Australia.

161. The delegate alleges that [Ms A] had a "relationship" with [Mr C] (her current husband) from February or March 2014. This is denied. [Ms A] and [Mr C] have given evidence that they may have seen each other in passing before the divorce but they did not speak to each other until November 2014 and had no "relationship" of any type before that date.

162. [Ms A] maintains that, until she was notified of the divorce, she had a continuing commitment to being the wife of [Mr B], the marriage was genuine and continuing, and they did not live separately and apart on a permanent basis.

163. The consequences of a decision to cancel a visa, especially a permanent visa, are very serious indeed and, applying what is called the *Briginshaw* test, an adverse finding should only be made where "the evidence establishes that proposition to a high degree of satisfaction",¹ and that "the onus lies on the Minister to demonstrate, to an appropriate degree of satisfaction having regard to the seriousness of the consequences for the applicant, the falsity or misleading character of the statements made by the applicant".² See also the comment of Madgwick J in the Full Federal Court: "It is also well recognized in Australian law that the matters at stake can and should affect the fact-finding processes of decision-makers".³

164. In any event, even if such a "relationship" existed (which is denied) that would not be sufficient to establish that the criterion in 5F(2)(b) is not met: see *Cao v Minister for Immigration* [2007] FMCA 225 at [42]-[43]:

165. *In my view, the correct interpretation of the relevant regulations is that it is a matter of fact and degree in the circumstances of the particular case whether an extra-marital sexual encounter indicates a lack of the required commitment to a shared life as husband and wife to the exclusion of all others. The regulations mean that a person is not a spouse as defined if he or she is party to another marriage-like relationship. Sex is only one part of such relationships and is obviously not unique to such relationships. Sex does not, of itself, mean that the relationship in which it occurs is a marriage-like relationship. The regulations do not exclude a person from being a spouse as defined if he or she engages in an extra-marital sexual encounter, provided that it is not in the context of a second marriage-like relationship and provided that he or she continues to have a commitment to a shared life as husband and wife with his or her spouse.*

166. *It is a matter of common knowledge that there are people who remain in their marriages for 20 or 30 years or more but who nevertheless during that time have numerous, short term, extramarital sexual encounters involving no significant emotional investment. It is also a matter of common knowledge that, sometimes, a person has an extramarital affair which ends after a time and the marriage continues. In other cases, a person who has an extramarital affair eventually leaves the marriage and goes on to build a new life as husband and wife with the person with whom he or she had the affair. In such cases, there is obviously a point where the commitment to the first marriage ends. It is a matter for the Tribunal as the finder of fact to determine in all of the circumstances of the particular case whether or not an extramarital sexual encounter of one of the parties to a marriage reflects a lack of commitment to a shared life as husband and wife with the other party to the marriage, and whether or not it reflects the formation of a second marriage-like relationship.*

167. Should the Tribunal take the view that there has been non-compliance, then we submit that there are substantial reasons why [Ms A]'s visa should not be cancelled.

168. [Ms A] was originally brought to Australia as the spouse of [Mr B], a relationship that was recognised as being genuine both when she applied for the visas and when the 309 was granted. She has since become the mother of two Australian-born children, the elder is an Australian citizen. She has remarried in Australia and established a life for herself and her family here.

169. If her visa is cancelled there will be no alternative for the family but to return to Bangladesh where she will have the social stigma of being a divorced woman. Her Australian-citizen child will have to go with her, thus losing the considerable advantages in education, health care and future employment opportunities that are his birthright.

170. I look forward to attending the hearing next Wednesday when all of the above issues will be discussed with the Member.

171. [Law firm 1]Digitally signed by [the applicant's representative]

172. Legal Practice Manager

173. -----

1. Per Wilcox J in Tarasovski & ors v MILGEA [1993] FCA 515 at [4], referring to Briginshaw v Briginshaw (1938) 60 CLR 336.
2. Jasbeer Singh v Minister of Immigration and Ethnic Affairs [1994] FCA 1534 at [48].
3. QAAH v Minister for Immigration & Multicultural & Indigenous Affairs [2005] FCAFC 136 at [102].

174. The following is an invitation dated 23 March 2018 by the Tribunal to the applicant to comment on or respond to information and to provide information:

175. **Invitation to comment on or respond to information**

176. In conducting the review, we are required by the Migration Act 1958 to invite you to comment on or respond to certain information which we consider would, subject to your comments or response, be the reason, or a part of the reason, for affirming the decision under review.

177. The particulars of the information are:

178. A Community Status Resolution document prepared by '[Ms F]' on 19 September 2014, included the following relevant information.

179. **Part 1 – Client Case Plan**

180. The client is [Mr C]. His address is [Address 1]. The name of his partner is [Ms A]. The length of relationship: Feb/March 2014. Their status is Married.

181. Concerns about claimed relationship (If relevant): [Ms A], was recently granted a BC100 on 1 September 2014 with sponsor [Mr B].

182. **Part 2 – Interview and Assessment Notes**

183. The information detailed below provides in part, relevant information disclosed to [Ms F] by [Mr C].

184. The initial interview was conducted by [Ms F] on 19 September 2014 in relation to a then ongoing 417 MI request. [Mr C] attended [State 1] CSRS for a scheduled interview.
185. [Mr C] was offered the use of an interpreter and declined, stating that he was happy to communicate in English. [Mr C] was advised that he would be required to attend a number of interviews to assess his eligibility for a Bridging visa.
186. During the interview [Mr C] stated that he is renting an apartment in [Suburb 2].
187. He is in a relationship. The relationship has only developed in the last 3 to 4 months. Previous to this they were friends for one year. His girlfriend's name is [Ms A]. He claims she is a permanent resident.
188. [Mr C] stated that he owns 50% of [Shop 1] bought in January 2014 and the other half belongs to his brother-in-law. The name of the shop is [Shop 1]. The address is [Address 6].
189. [Mr C] was asked to bring with him to the next interview his proof of address.
190. [Mr C] confirmed that he understood and stated that he did not have any questions.
191. The second CSRS interview was conducted on 20/11/2014
192. [Mr C] did not bring updated evidence of his residential address.
193. [Mr C] was advised to bring evidence of his residential address at the next interview.
194. [Mr C] stated that he is still in a relationship with [Ms A], her parents are going to meet his mum this week to discuss marriage. [Mr C] stated that they know each other from Bangladesh. They are from the same village. Their friendship turned into a relationship in February/March this year. [Mr C] believes that [Ms A] is divorced.
195. [Mr C] was asked to bring with him to the next interview, proof of address.
196. The third CSRS interview was conducted on 20/01/2015
197. [Mr C] did not bring any evidence of his residential address. The interviewer, [Ms F], advised [Mr C] to bring with him at his next interview evidence of his residential address. He was also asked to bring evidence of his joint ownership of the [shop] he owns with his brother.
198. [Mr C] stated that he is still in a relationship with [Ms A].
199. [Mr C] again stated that he is not living together with [Ms A] as they are not married.
200. The interviewer asked [Mr C] to bring his proof of address to the next interview.
201. [Mr C] confirmed that he understood and stated that he did not have any questions.
202. The fourth CSRS interview was conducted on 12/03/2015
203. [Mr C] stated that he did not bring any evidence of his residential address.

204. He advised that he moved to his sister's address in February.
205. [Mr C] stated that he married [Ms A] on 05/02/2015. He provided a copy of the registered marriage certificate. The interviewer asked him to either send her a certified copy or bring the original in at the next interview.
206. [Mr C] stated that [Ms A] recently divorced and her previous husband has returned to Bangladesh.
207. The interviewer asked [Mr C] to bring with him proof of his address to the next interview.
208. [Mr C] confirmed that he understood and stated that he did not have any questions.
209. The fifth CSRS interview was conducted on 09/04/2015
210. [Mr C] stated that he is still residing with his wife, his sister and her husband. [Mr C] stated that he is still in a relationship with his wife [Ms A]. She has an appointment with the doctor next week as they are hoping to be pregnant soon. [Mr C] stated that he hopes to lodge an application for a spouse visa if the Minister does not intervene.
211. The interviewer asked [Mr C] to bring with him to the next interview, his proof of address.
212. [Mr C] confirmed that he understood and stated that he did not have any questions.
213. The sixth CSRS interview was conducted on 07/05/2015
214. The same interviewer, [Ms F], continued with the interview with [Mr C].
215. [Mr C] stated that he is still residing with his wife, his sister and her husband.
216. [Mr C] stated that he is still in a relationship with his wife [Ms A]. He stated that his wife is nine weeks pregnant.
217. The interviewer asked [Mr C] to bring with him to the next interview proof of address and evidence that his wife is pregnant.
218. [Mr C] confirmed that he understood and stated he did not have any questions.
219. The seventh CSRS interview was conducted on 09/06/2015
220. MIU finalised [Mr C]'s case on 11/06/2015.
221. [Mr C] stated that he is still residing with his wife, his sister and her husband.
222. [Mr C] stated that his wife is pregnant and he has brought in a letter from her doctor confirming this.
223. The eighth CSRS interview was conducted on 30/06/2015
224. [Mr C] further stated that he does not wish to depart as his wife is due to have their baby in December and he cannot leave her.

225. [Mr C] stated that he is still residing with his wife, his sister and her husband. His brother-in-law is currently supporting them as he is not able to work.

226. The ninth CSRS interview was conducted on 09/07/2015

227. [Mr C] stated that he did not wish to depart as his wife is due to have their baby in December.

228. All the interviews have been conducted by the same person, [Ms F].

229. The tenth CSRS interview was conducted on 26/08/2015

230. The interview was conducted by [Ms F].

231. [Mr C] has a repeat MI request that is at the initial stage.

232. [Mr C] further stated that he does not wish to depart as his wife is due to have their baby in December.

233. [Mr C] stated that he continues to reside with his wife, his sister and brother-in-law.

234. His wife is almost 6 months pregnant.

235. The following is a submission provided by the applicant's legal representative on 27 March 2018:

236. I refer to the Tribunal's letter of 23 March 2018 and attach statutory declarations of the applicant and her husband in response.

237. I repeat the submissions made in my letter to the Tribunal of 7 December 2017 in which I referred to the case of *Cao v Minister for Immigration [2007] FMCA 225*. Whatever interpretation is placed on the report of the Immigration officer, it is insufficient to support an inference that there was a "marriage-like relationship" between [Mr C] and [Ms A] at any time before she was granted her permanent visa. It therefore cannot be said that her marriage to [Mr B] was not "to the exclusion of all others" as that phrase is correctly interpreted.

238. The applicant relies on her evidence and the evidence of [Mr C] at the hearing as to why her visa should not be cancelled.

239. Parish Patience Immigration Lawyers

240. Digitally signed by [the applicant's representative]

241. Legal Practice Manager

242. The following is a statutory declaration declared at [City 1] on 27 March 2018 by [Mr C]:

243. I went to an interview with the Department of Immigration about my bridging visa on 19 September 2014. I had just finished my work shift and I was tired and I was nervous about being interviewed by an immigration officer.

244. My English is still not very good and at that time it was worse. I don't remember being asked if I wanted an interpreter. The officer asked me questions about where I was living and who I knew in the community. I thought I should try to show that I had friends so I gave her the name of [Ms A]. I said she was my friend. I think the officer used the word "girlfriend" but I did not know what that really meant in English. I also did not understand the word "relationship".

245. It was true that I had known [Ms A] for several months but we did not live together and we were not in any sort of romantic relationship. I think I told the officer that we were from the same village but I did not say we knew each other in Bangladesh. [Ms A] is several years younger than me and I left Bangladesh in 2003.

246. [Ms A]'s husband divorced her without telling her shortly after she was granted a permanent visa. It was after that that we started to talk about getting married.

247. [Ms A] and I were married on 5 February 2015. We did not live together as husband and wife at any time before the marriage.

248. I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the Statutory Declarations Act 1959, and I believe that the statements in this declaration are true in every particular.

249. The following is a statutory declaration declared at [City 1] on 27 March 2018 by [Ms A]:

250. I married [Mr C] on 5 February 2015. I was not in any sort of marriage type relationship with him before we were married and we did not live together.

251. I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the Statutory Declarations Act 1959, and I believe that the statements in this declaration are true in every particular.

252. Consideration of the evidence

253. The information detailed below provides relevant information disclosed to the interviewer, [Ms F], by [Mr C].

254. The initial interview was conducted by [Ms F] on 19 September 2014 in relation to a then ongoing s.417 ministerial intervention request. [Mr C] attended [State 1] CSRS for the scheduled interview.

255. [Mr C] was offered the use of an interpreter and declined, stating that he was happy to communicate in English. [Mr C] was advised that he would be required to attend a number of interviews to assess his eligibility for a bridging visa. The Tribunal accepts this evidence.

256. During the interview [Mr C] stated that he is in a relationship. The relationship has only developed in the last three to four months. Previous to this they were friends for one year. His girlfriend's name is [Ms A]. He claimed she is a permanent resident.

257. The second CSRS interview was conducted on 20 November 2014.

258. [Mr C] stated that he is still in a relationship with [Ms A], her parents were going to meet his mum that week to discuss marriage. [Mr C] stated that they know each other from Bangladesh. They are from the same village. Their friendship turned into a relationship in February/March this year (2014). [Mr C] believes that [Ms A] is divorced. The Tribunal gives a great deal of weight to this evidence as it provides chronological details supporting the length of their knowledge of each other, from the time they lived in the same village in Bangladesh. Further, [Mr C] clearly stated that their friendship turned into a relationship in February/March 2014. He also referred to [Ms A] being divorced. The evidence before the Tribunal is that [Ms A] and [Mr B] divorced on 10 September 2014. So [Mr C]'s evidence that she was divorced was correct and, current. Furthermore, their parents were going to discuss marriage, which eventuated on 5 February 2015.

259. The Tribunal finds in the context of [Mr C]'s answers that the relationship between him and [Ms A] was more than being friends. He clearly distinguishes the use of the word 'relationship' in both interviews referred to above. That is, he refers to them being friends for 12 months and then 'the relationship developed'.
260. During the interview held on 20 January 2015 [Mr C] stated that he was not living together with [Ms A] as they were not married. However, the Tribunal finds this does not exclude them from having a relationship elsewhere.
261. In this regard, the NOICC stated the following information about the residential addresses.
262. [Ms A], [Mr B] and [Mr C] shared the address of [Address 1] as detailed below:
- From 22 February 2012 until 8 July 2015, it was [Mr C]'s nominated address.
 - From June 2012 until March 2015, it was [Mr B]'s nominated address.
 - From 31 December 2012, it was [Ms A]'s nominated address.
263. On 23 December 2013, [Mr B] and the applicant had a six month lease for (house number omitted) [Address 2].
264. This information shows that [Mr C] and [Ms A] shared the nominated address of [Address 1] from 31 December 2012 to 8 July 2015. However, [Mr B] and [Ms A] had a six month lease commencing on 23 December 2013 for a house [at Address 2].
265. It is noted that [Mr C] was repeatedly asked by [Ms F] to bring proof of his residential address to the next interview. Despite this repeated request, the Tribunal finds that at interviews 2, 3, 4, 5 and 6 he did not bring proof of his residential address despite being requested to do so until [Ms F] finally stopped asking him at the remaining interviews, 7,8,9 and 10. The Tribunal finds that despite the applicant stating that he and [Ms A] were not living together because they were not married, it is clearly possible that they were living together or meeting in secret.
266. Further, in the response to the NOICC by the applicant through her representative, it was put that when [Mr C] was interviewed by the Department he requested an interpreter but, was not provided with one, and his English is not good. In addition, [Mr C], after having worked night shift, was tired, felt stressed, did not fully understand the questions put to him and gave wrong answers. He first talked to the applicant in November 2014.
267. Clearly the interviews by [Ms F] that were conducted with [Mr C] do not support the claims in the response to the NOICC by the applicant. Firstly, it was claimed that his English is not good; and secondly, he requested an interpreter; and thirdly, he was not provided one.
268. Particulars of information about the interviews with [Ms F] were provided to the applicant, and they show that at the initial interview conducted on 19 September 2014, [Mr C] was offered the use of an interpreter, and he declined, stating that he was happy to communicate in English.
269. The Tribunal does not accept [Mr C]'s claim that his poor English, tiredness and lack of understanding of what was going on led him to give evidence that the relationship between him and [Ms A] started in February 2014. The interview notes indicate that [Mr C] was offered an interpreter for the purposes of the first interview and that he declined this offer saying he was happy to communicate in English. The Tribunal finds that [Mr C] gave a spontaneous and truthful response in reply to a question that he was asked by [Ms F] and

that this reflected the circumstances at the time, that is that he and [Ms A] had been in a relationship since February/March 2014.

270. Further, in the applicant's representative's typed submission dated 8 December 2017, the representative wrote:

271. The delegate alleges that [Ms A] had a "relationship" with [Mr C] (her current husband) from February or March 2014. This is denied. [Ms A] and [Mr C] have given evidence that they may have seen each other in passing before the divorce but they did not speak to each other until November 2014 and had no "relationship" of any type before that date.

272. Furthermore, the applicant has stated that she met [Mr C] from the end of November 2014 in [City 1]. However, in doing so she contradicts her statutory declaration declared on 4 May 2016 where she wrote that she met [Mr C] in February/March 2014. Moreover, her evidence in her statutory declaration above supports [Mr C]'s evidence that they met in February/March 2014, but she wrote that at the time they did not talk to each other. They met a few times after that and still they did not talk. She wrote that they first talked to each other in November 2014.
273. The Tribunal finds [Ms A]'s evidence is not credible.
274. [Mr C] stated in the second CSRS interview held on 20 November 2014 that he and [Ms A] knew each other from Bangladesh. They are from the same village. Their friendship turned into a relationship in February/March 2014. His evidence is consistent.
275. The Tribunal finds that the applicant and sponsor were not only in a relationship from February/March 2014 but that over the previous twelve months prior to that, they were friends, based on [Mr C]'s evidence given to [Ms F] at interview on 19 September 2014. The Tribunal also finds that these events would have required them speaking to each other, at the very least. The Tribunal finds on the evidence that they did speak to each other.
276. Regarding [Ms A]'s evidence, the Tribunal has considered the following evidence from her at the Tribunal hearing.
277. The Tribunal asked when the applicant first met her second husband, [Mr C]. The applicant said from the end of November 2014, in [City 1]. The Tribunal asked if she had met [Mr C] before in Bangladesh. She said no. He was not living in Bangladesh. He left Bangladesh 13 to 14 years previously. Based on the preceding evidence, the Tribunal puts little weight on her evidence.
278. The Tribunal finds [Mr C]'s evidence is contrary to [Ms A]'s. His evidence is that he and [Ms A] knew each other from Bangladesh. They are from the same village. Further, their friendship turned into a relationship in February/March 2014. The Tribunal gives weight to his evidence and finds that [Ms A] and [Mr C] started a relationship in or around February/March 2014 while she was still married to [Mr B].
279. In the second CSRS interview conducted by [Ms F], on 20 November 2014, [Mr C] stated that he is still in a relationship with [Ms A]. Her parents were going to meet his mum that week to discuss marriage. [Mr C] stated that they know each other from Bangladesh. They are from the same village. Their friendship turned into a relationship in February/March 2014. [Mr C] believed that [Ms A] was divorced.
280. The Tribunal finds that the correct information is that at the time the Subclass 100 (Spouse) visa was granted to [Ms A], on 1 September 2014, she was no longer in a genuine spousal relationship with [Mr B] to the exclusion of all others, as the Tribunal is of the view that she

was in a relationship with [Mr C] and that relationship began in February-March 2014, six to seven months prior to the grant of the Subclass 100 visa on 1 September 2014.

281. The Tribunal finds that the evidence of [Ms A] and [Mr C] is inconsistent. The Tribunal places very little weight on [Ms A]'s evidence. The Tribunal puts weight on [Mr C]'s early evidence.
282. The Tribunal refers to the material provided by [Ms F], principally at the beginning of the series of interviews, where the evidence provided by [Mr C] appeared to be spontaneous and consistent. For example, [Mr C] was offered the use of an interpreter and declined, stating that he was happy to communicate in English. However, this was later changed completely in the evidence. Further, at the first interview held on 19 September 2014 he stated that he was in a relationship which had only developed in the last three to four months, and previous to this they were friends for one year. He also said his girlfriend's name is [Ms A]. Later this evidence was changed in his statutory declaration dated 27 March 2018 where he stated, 'I thought I should try to show that I had friends so I gave her the name of [Ms A]. I said she was my friend.'
283. Furthermore, at the second interview conducted on 20 November 2014, and at the third interview on 20 January 2015, [Mr C] stated that he was still in a relationship with [Ms A]. Further, in the second interview he also stated that her parents were going to meet his mother during the week to discuss marriage. [Mr C] stated at the interview that they know each other from Bangladesh. They are from the same village. Their friendship turned into a relationship in February/March (2014). However, in the statutory declaration dated 27 March 2018 [Ms A] stated 'I married [Mr C] on 5 February 2015. I was not in any sort of marriage type relationship with him before we were married and we did not live together'.
284. The spontaneous evidence before [Ms F] was clear; however, the later evidence is conflicting. The Tribunal accepts the spontaneous evidence and gives it weight. The Tribunal only gives little weight to the later conflicting evidence.
285. While the Tribunal has considered the representative's submissions, having regard to all relevant circumstances, the Tribunal finds that [Ms A] and [Mr B] were no longer spouses as defined in s.5F of the Act at the time [Ms A] was granted her permanent partner visa on 1 September 2014 because they no longer had a mutual commitment to a shared life to the exclusion of all others and because the relationship between them was no longer genuine and continuing. The Tribunal bases this finding on [Mr C]'s evidence relating to his relationship with [Ms A], given to [Ms F] at interview, on 19 September 2014, where he described [Ms A] as his girlfriend, stated that he and [Ms A] were in a relationship and stated that they had been friends for a year before that. Further, [Ms A] claims in paragraph 7 of her statutory declaration declared on 4 May 2016 that she knew [Mr C] from February-March 2014, and he indicated at the interviews in strong evidence that they had known each other well before that, from when they lived in Bangladesh, and as detailed at length in this decision.

286. Decision whether to cancel (s.109)

287. The Tribunal finds that the applicant has not complied with ss.104(1) and (2) of the Act because she failed to inform the Department of her change in circumstances prior to her second stage permanent Subclass 100 (Spouse) visa grant.
288. Firstly, [Ms A] stated in her declaration dated 23 April 2014, 'Since we get married we [[Mr B] and the applicant] know each other very well. We found we care for each other very much. We cannot live separate from each other. We love each other from our heart. Our relationship is genuine and long-life'.

289. However, the relevant changes in the applicant's circumstances, namely the end of her relationship with [Mr B], discussed in this decision, caused the applicant's answer above that their relationship was 'genuine and long-life' to become incorrect.
290. The Tribunal finds that the change in circumstances, namely the end of [Ms A]'s relationship with [Mr B], happened before the visa was granted on 1 September 2014; however, she did not inform the Department of the new circumstances and of the correct answer (that is, that she was no longer in a genuine and long-life relationship with [Mr B]) before the Subclass 100 Visa was granted.
291. [Ms A] claims that after the second wedding her husband submitted a marriage certificate to the Department. This is correct, [Mr C] and [Ms A] were married on 5 February 2015 and this is stated on the Commonwealth of Australia certificate of marriage. Other than this, the Tribunal is not aware that the applicant has informed the Department in writing of the new circumstances and of the correct answer prior to the grant of the visa.
292. The Tribunal finds that [Ms A] has not complied with ss.104(1) and (2) of the Act and there has been non-compliance in the way described in the s.107 notice.
293. Section 99 of the Act also applies to s.104 of the Act.

294. **Section 109(1)**

295. Section 109(1) of the Act allows the Minister to cancel a visa if the visa holder has failed to comply with ss.101, 102, 103, 104, 105 or 107(2) of the Act. Broadly speaking, these sections require non-citizens to provide correct information in their visa applications and passenger cards, not to provide bogus documents and to notify the Department of any incorrect information of which they become aware and of any relevant changes in circumstances.
296. The exercise of the cancellation power under s.109 of the Act is conditional on the Minister issuing a valid notice to the visa holder under s.107 of the Act, providing particulars of the alleged non-compliance. Where a notice is issued that does not comply with the requirements in s.107, the power to cancel the visa does not arise. Extracts of the Act relevant to this case are attached to this decision.
297. In the present matter, the Tribunal is satisfied that the delegate had reached the necessary state of mind to engage s.107 and that the notice issued under s.107 complied with the statutory requirements.
298. In exercising the power to cancel, the Tribunal must consider the applicant's response (if any) to the s.107 notice about the non-compliance and have regard to any prescribed circumstances: s.109(1)(b) and (c). The prescribed circumstances are set out in r.2.41 of the Migration Regulations 1994 (the Regulations).

299. **The prescribed circumstances**

300. The prescribed circumstances are set out in r.2.41 of the Regulations. Briefly, they are: the correct information; the content of the genuine document (if any); whether the decision to grant a visa or immigration clear the visa holder was based, wholly or partly, on incorrect information or a bogus document; the circumstances in which the non-compliance occurred; the present circumstances of the visa holder; the subsequent behaviour of the visa holder concerning his or her obligations under Subdivision C of Division 3 of Part 2 of the Act; any other instances of non-compliance by the visa holder known to the Minister; the time that has elapsed since the non-compliance; any breaches of the law since the non-compliance and

the seriousness of those breaches; and any contribution made by the holder to the community.

301. While these factors must be considered, they do not represent an exhaustive statement of the circumstances that might properly be considered to be relevant in any given case: *MIAC v Khadgi* (2010) 190 FCR 248. The Tribunal may also have regard to lawful government policy. The relevant policy is set out in the Department's Procedures Advice Manual PAM3 'General visa cancellation powers'. This policy requires delegates to also have regard to matters such as whether the visa would have been granted if the correct information had been given, whether there are persons in Australia whose visa would, or may, be automatically cancelled under s.140 of the Act, and whether the visa cancellation may result in Australia breaching its international obligations.

302. *The correct information (r.2.41(a))*

303. The correct information is that [Ms A] and [Mr B]'s relationship ended before the grant of her Subclass 100 Visa on 1 September 2014 and that a relationship between [Ms A] and [Mr C] started in and about February/March 2014.
304. This is in contrast to the information given by [Ms A] in her statutory declaration dated 23 April 2014 that the relationship between her and [Mr B] was 'genuine and long-life,' and that she was in a genuine spousal relationship with her former husband, [Mr B], when her second stage Subclass 100 (Spouse) visa was granted.

305. *The content of the genuine document (if any) (r.2.41(b))*

306. This circumstance is not applicable.

307. *Whether the decision to grant a visa or immigration clear the visa holder was based, wholly or partly, on incorrect information or a bogus document*

308. Had the circumstances pertaining to the relationship between the applicant and [Mr B] changed, the Tribunal considers that the applicant would not have been granted a Partner visa on 1 September 2014 as the changed circumstances were material to the determination whether the applicant was in a genuine, exclusive and continuing relationship with her sponsor, [Mr B]. It would also have triggered further investigation into their marital relationship by the Department.

309. *The circumstances in which the non-compliance occurred (r.241(d))*

310. This has been covered previously in this decision, above. However, the non-compliance occurred when the applicant did not notify the Department of her change in circumstances. On 5 May 2016 the applicant's representative, when responding to the NOICC provided the Department with the following information.

- On 7 May 2014, [Mr B] departed Australia. The applicant asked if she could go with him and was told that he had family business and did not need her to accompany him.
- On 1 September 2014, the Subclass 100 (Spouse) visa was granted to the applicant.
- On 10 September 2014, [Mr B] divorced the applicant.

311. The Tribunal also finds that [Ms A] deliberately withheld information about the change in her circumstances, because she knew it would affect the outcome of her Subclass 100 Visa application.

312. *The present circumstances of the visa holder (r.2.41(e))*

313. The applicant was living in Australia with her current husband, [Mr C]. He claims to be a [Occupation 1] and owns a half share in [Shop 1] with his brother-in-law. According to Departmental records, [Mr C] has exhausted all his avenues (his [visa application] was refused by the Department, as affirmed by [the tribunal] and the High Court, and his ministerial intervention request had been refused by the Minister).

314. [Mr C] and [Ms A] married on 5 February 2015. After the applicant's wedding, she has been living with her husband, and she has had two children with him. Her eldest is [Child 1], born [Date of birth deleted], and [Child 2] born [Date of birth deleted].

315. *The subsequent behaviour of the visa holder concerning his or her obligations under Subdivision C of Division 3 of Part 2 of the Act (r.2.41(f))*

316. Section 101 of the Migration Act provides that:

317. A non-citizen must fill in or complete his or her application form in such a way that:

318. (a) all questions on it are answered; and

319. (b) no incorrect answers are given or provided.

320. Section 102 states that:

321. A non-citizen must fill in his or her passenger card in such a way that:

322. (a) all questions on it are answered; and

323. (b) no incorrect answers are given.

324. The applicant arrived in Australia on 30 December 2012, and a copy of her passenger card has been provided.

325. Regarding the passenger card, the applicant did not provide her email address, or address. She did not provide any emergency contact details (family or friend). She did not provide the name of the country from which she boarded her flight to Australia. She did not state her usual occupation. She did not answer any of the 11 questions as to what she was bringing into Australia. She did not indicate whether she was migrating permanently to Australia, a visitor or temporary entrant or a resident returning to Australia. She did not indicate her intended length of stay in Australia, the country where she spent most time abroad, her country of residence or her main reason for coming to Australia.

326. The Tribunal finds that the applicant did not complete all of her passenger card in such a way that all questions on it were answered.

327. Section 103 states that:

328. A non-citizen must not give, present, produce or provide to an officer, an authorised system, the Minister, the Immigration Assessment Authority, or the Tribunal performing a function or purpose under this Act, a bogus document or cause

such a document to be so given, presented, produced or provided. In the Migration Act 1958 (extracts) provides the following interpretation of bogus documents.

329. Section 5 of the Act provides that unless the contrary intention appears: 'bogus document', in relation to a person, means a document that the Minister reasonably suspects is a document that:

330. (a) purports to have been, but was not, issued in respect of the person;
or

331. (b) is counterfeit or has been altered by a person who does not have authority to do so; or

332. (c) was obtained because of a false or misleading statement, whether or not made knowingly.

333. In this case, the applicant's second stage Subclass 100 (Spouse) visa was granted because the applicant knew the new information, that she was in a relationship with [Mr C], but she did not inform an officer in writing before the visa was granted. That is, she withheld the information.

334. Section 104(1) of the Act provides that:

335. If circumstances change so that an answer to a question on a non-citizen's application form or an answer under this section is incorrect in the new circumstances, he or she must, as soon as practicable, inform an officer in writing of the new circumstances and of the correct answer in them.

336. The Tribunal finds that the applicant knew the new information but did not inform an officer in writing.

337. Section 104(2) of the Act states:

338. If the applicant is in Australia at the time the visa is granted, subsection (1) only applies to changes in circumstance before the visa is granted.

339. The Tribunal finds that the applicant knew the new information but she did not inform an officer in writing before the visa was granted. As a result, she has not complied with section 104(1) and (2) of the Act. That is, the applicant did not notify the Department of the changes and as a result, she did not comply with ss.104(1) and (2) of the Act in the way described in the s.107 notice.

340. Section 104(3) states:

341. If the applicant is outside Australia at the time the visa is granted, subsection (1) only applies to changes in circumstances after the application and before the applicant is immigration cleared.

342. The applicant arrived in Australia on 30 December 2012, and the Subclass 100 (Spouse) visa was granted on 1 September 2014. The Tribunal finds that the applicant was inside Australia when the Subclass 100 (Spouse) visa was granted. Section 104(3) does not apply to the applicant's circumstances.

343. Section 104(4) states:

344. Subsection (1) applies despite the grant of any visa.

345. As a result, the applicant has to provide the correct answer. However, the applicant was not in a genuine, exclusive spousal relationship with [Mr B] when her second stage partner visa was granted (Subclass 100 (Spouse) visa). The applicant failed to advise the Department of changes in her personal circumstances.

346. Section 107(A) states:

347. The possible non-compliances that:

- (a) may be specified in a notice by the Minister under section 107 to a person who is the holder of a visa; and
- (b) if so specified, can constitute a ground for the cancellation of that visa under section 109;

348. include non-compliances that occurred at any time, including non-compliances in respect of any previous visa held by the person.

349. The Tribunal finds that non-compliances have occurred, as indicated.

350. If the visa holder responds to the notice, he or she must do so without making any incorrect statement.

351. The applicant has not complied with her obligations.

352. *Any other instances of non-compliance by the visa holder known to the Minister (r.2.41(g))*

353. There is no information before the Tribunal about any other non-compliance.

354. *The time that has elapsed since the non-compliance (r.2.41(h))*

355. The non-compliance occurred between 30 April 2014 when [Ms A] applied for the Subclass 100 (Spouse) visa and 1 September 2014 when the visa was granted. Approximately three years and ten months have elapsed since the non-compliance with s.101 of the Act.

356. *Any breaches of the law since the non-compliance and the seriousness of those breaches (r.2.41(j))*

357. There is no information before the Tribunal that the applicant has committed any further breaches of the law.

358. *Any contribution made by the holder to the community (r.2.41(k))*

359. No known claims have been made about any contribution to the community.

360. **Other considerations**

361. *Whether the visa would still have been granted if the correct information had been given*

362. This issue has been addressed elsewhere. The Tribunal finds that [Ms A] would not have been granted a visa if she had notified the decision-maker of her change in circumstances.

363. *Whether there are persons in Australia whose visas would, or may, be cancelled under s.140*

364. Section 140(1) of the Migration Act relevantly states that if a person's visa is cancelled under s.109 (incorrect information), a visa held by another person because of being a member of the family unit of the person is also cancelled.
365. So, in this case, the applicant's younger child's visa might be cancelled under s.140(1). However, s.140(2) relevantly states if: a person's visa is cancelled under section 109 (incorrect information); and (b) another person to whom subsection (1) does not apply holds a visa only because the person whose visa is cancelled held a visa, the Minister may, without notice to the other person, cancel the other person's visa.
366. Further, s.140(3) relevantly states if: (a) a person's visa (the **cancelled visa**) is cancelled under any provision of this Act; and (b) the person is a parent of another person; and (c) the other person holds a particular visa (the **other visa**), that was granted under s.78 (child born in Australia) because the parent held the cancelled visa, the other visa is also cancelled.
367. Furthermore, s.140(a) states if: (a) a visa is cancelled under subsection (1), (2) or (3) because another visa is cancelled; and (b) the cancellation of the other visa is revoked under ss.131, 133F, 137L or 137N, the cancellation under subsection(1), (2) or (3) is revoked.
368. The applicant's representative has submitted that [Ms A] was originally brought to Australia as the spouse of [Mr B], in a relationship that was recognised as being genuine both when she applied for the visas and when the Subclass 309 visa was granted. She has since become the mother of two Australian-born children, one of whom, the elder child [Child 1], is an Australian citizen. The second child, [Child 2], is a citizen of Bangladesh. He has a current Class WE Subclass 050 visa (that is, a Bridging visa E). The applicant, [Ms A], has remarried in Australia and has established a life for herself and her family here.
369. Subsection 140(3) applies only to visas granted to children born in Australia, and is automatic. Section 78 of the Act provides that a child born in Australia will be taken to hold the same visa as his or her parent(s).
370. Subsection 140(4) applies to revocation of cancellations and is also automatic. In any situation where the primary person successfully seeks revocation of their cancellation, the cancellation of any other persons who were cancelled under ss.140(1)–(3) is also revoked.
371. Department policy, which does not bind the Tribunal, indicates that if there are children in Australia whose interests could be affected by the cancellation, or who would themselves be affected by consequential cancellation, the best interests of the children are to be treated as a primary consideration.

372. *Whether Australia has obligations under relevant international agreements*

373. It has been submitted that if the applicant's visa is cancelled there will be no alternative for the family but to return to Bangladesh where she will have the social stigma of being a divorced woman. It has further been submitted that her Australian-citizen child will have to go with her, thus losing the considerable advantages in education, health care and future employment opportunities that are his birthright.
374. The Tribunal has considered the following. [Mr C] and [Ms A] married on 5 February 2015. After the applicant's marriage, she has been living with her husband, and she has had two children with him. Her eldest is [Child 1], born [Date of birth deleted], and [Child 2] who was born [Date of birth deleted].

375. The Australian Human Rights Commission website² states that the main international human rights treaty on children's rights is the Convention on the Rights of the Child (CRC). The CRC is the most widely ratified human rights treaty in the world. Australia ratified the CRC in December 1990, which means that Australia has a duty to ensure that all children in Australia enjoy the rights set out in the treaty.
376. The CRC incorporates the whole spectrum of human rights – civil, political, economic, social and cultural – and sets out the specific ways these rights should be ensured for children and young people. The CRC recognises that children have the same human rights as adults, while also needing special protection due to their vulnerability.
377. Some of the guiding principles in the CRC are
- respect for the best interests of the child as a primary consideration
 - the right to survival and development
 - the right of all children to express their views freely on all matters affecting them
 - the right of all children to enjoy all the rights of the CRC without discrimination of any kind.
378. The Australian Department of Foreign Affairs and Trade (DFAT) reports that Bangladesh is a parliamentary democracy.³
379. Bangladesh's Constitution guarantees fundamental rights for citizens, including equality before the law and the right to the protection of law (Article 27); the rights to life and personal liberty (Article 32); freedom from discrimination based on religion, race, caste, sex or place of birth (Article 28); and the freedoms of religion (Article 41), movement (Article 36), assembly (Article 37), association (Article 38), thought, conscience and speech (Article 39), and profession and occupation (Article 40). The Constitution does not protect against discrimination on political grounds.
380. The *National Human Rights Commission Act 2009* established Bangladesh's National Human Rights Commission (NHRC), whose primary focus is public education and advocacy. The President appoints NHRC members on the recommendation of a seven-member committee comprising leaders of the ruling party. The Finance Ministry channels funding for the NHRC through the Ministry of Law and Justice. Several other government ministries hold responsibility for protecting human rights in accordance with the Constitution and corresponding legislation.
381. The Constitution holds that Islam is the state religion but commits the state to ensuring equal status and equal rights in the practice of the Hindu, Buddhist, Christian and other religions. The Constitution also commits the state to upholding secularism by not granting political status in favour of any religion, by prohibiting the abuse of religion for political purposes, and by prohibiting discrimination or persecution of persons protecting any religion.
382. Article 28(2) of the Constitution states that women shall have equal rights with men in all spheres of the state and of public life, and numerous additional constitutional provisions prohibit discrimination on the grounds of sex.
383. Bangladesh accepts both voluntary and involuntary returnees.

²<https://www.humanrights.gov.au>

³ DFAT, *DFAT Country Information Report Bangladesh*, 2 February 2018

384. The Tribunal considers that keeping the family unit together, as enshrined in Articles 7 and 9 of the CRC, is a prime consideration in a child's best interests, which include development, nurturing, security and support, etc. Therefore wherever the family unit is based, this would make up a significant portion of what constitutes the child's best interests. On the other hand, this consideration also needs to be weighed against other factors, such as the seriousness of the non-compliance in Australia and maintaining the integrity of Australia's migration program. In this regard, the Tribunal finds that the conduct of the applicant was deliberate and calculated and that the non-compliance was serious. The Tribunal also notes that the children's father [Mr C]'s ministerial appeal was refused and he has exhausted all avenues after [the tribunal] affirmed the Department's decision to refuse his [visa] application on 19 December 2013 and the Full Federal Court dismissed his appeal [in] August 2014. He and the applicant are currently on a Bridging visa E, pending departure from Australia. Both he and the applicant are from Bangladesh. The Tribunal considers that the best interests of the two children are to be with their parents in Bangladesh, as a family unit.
385. Regarding the applicant's representative's claims concerning the access to education of children and employment opportunities in Bangladesh, DFAT's report reflects positively on these issues.
386. DFAT reports that Bangladesh is also a party to the CRC.⁴
387. The DFAT report includes the following information. Bangladesh has experienced significant political, social and economic change since independence. A succession of military coups d'état led to military rule for much of the 1970s and 1980s. Subsequently, a series of popular mass democratic movements established in 1991 a system of parliamentary democracy. The country's economy has grown steadily since the 1990s, lifting large numbers of Bangladeshis out of poverty.
388. Regarding the children's access to future employment opportunities, Bangladesh's economy has grown continuously at an annual rate of 5 to 6 percent since the mid-1990s, accelerating to 7.1 percent in 2016. The economy withstood the Global Financial Crisis with minimal ill effects, and economists forecast continuing strong growth in the medium term.
389. Regarding access to education in Bangladesh, the Constitution provides for free and universal primary education, which is compulsory under the *Primary Education (Compulsory) Act 1990*. Most Bangladeshi children complete a full course of primary education, and Bangladesh has largely achieved gender parity in primary and secondary school enrolment.
390. Some health outcomes in Bangladesh have improved significantly over the past decade: life expectancy has increased from 68 in 2005 to 72 in 2015.
391. The World Bank provided the following statistics regarding education in Bangladesh: the country's net enrolment rate at the primary school level increased from 80 percent in 2000 to 98 percent in 2015, and secondary school net enrolment is around 54 percent as at 2016, up from 45 percent in 2000.⁵
392. The World Bank's development update on Bangladesh provided the following information.
393. **Dhaka, April 9, 2018** — Bangladesh is continuing its strong development trajectory, even as the pace of poverty reduction has slowed down, according to a new World Bank report, "The Bangladesh Development Update April 2018."

⁴ DFAT, *DFAT Country Information Report Bangladesh*, 2 February 2018

⁵www.worldbank.org/en/results/2016/10/07/ensuring-education-for-all-bangladeshis

394. **Sustained economic growth driven by exports, domestic demand and remittances.** Despite challenges, the country maintained robust growth. Its exports have rebounded – primarily led by the Ready-Made Garments (RMG) sector – with a 6.33% growth in FY18, compared with 4% in the previous year. A 17% growth in remittances, with more Bangladeshis going to work abroad, combined with effective action against illegal money transfers, may have contributed to the recovery, added the report.

395. **Despite macroeconomic challenges, GDP growth is projected to be robust,** in the 6.5 to 7 percent range during FY18-20. The key growth drivers are expected to be exports, driving manufacturing growth, and services, driven primarily by domestic consumption. Despite being affected by recurring floods in 2017, agriculture sector rebounded. However, private investment, which stagnated in recent years, is expected to pick up with growing confidence on infrastructure development prospects, strong domestic demand, and stronger global markets.

396. Regarding the possible social stigma of a divorced woman, it should be noted that the applicant has been divorced, but more importantly, she has subsequently married again, and she has two children with her present husband, [Mr C].

397. In 'Marriage and Dissolution of Marriage in Bangladesh: From Legal and Religious Perspective,' Ahamuduz Zaman– Assistant Professor and Coordinator of LL M Program, Department of Law, ASA University Bangladesh– states that 'As long as a woman is married, her marriage to any other man is prohibited. She may marry another man only when two conditions are fulfilled: Her marriage tie is broken either because of the death of her husband or because of divorce; and she has completed the period of waiting (iddah)'.

398. The Tribunal finds that the applicant has been divorced and she has completed the period of waiting.

399. Further, 'The Social Sanction of Divorce: Who Ultimately Pay the Social Costs of Its Adverse Effects?' by Md. Mizanur Rahman, Department of Social Work, Shahjalal University of Science and Technology, Sylhet, Bangladesh; Dr Vincentas Rolandas Giedraitis, Faculty of Economics, Vilnius University, Lithuania; and Mrs Tahmina Akhtar, Institute of Social Work and Research, Dhaka University, Bangladesh, provides the following relevant information.

400. In Bangladesh, the reasons of divorce are multi-dimensional such as dowry, infertility, sexual incompatibility and physical violence, husbands' failure in provider role, presence of alcohol and drug addiction, and many modern reasons of divorce such as value clash, husband's lack of love and commitment, lack of freedom, obstacle in self-development through education, husband's involvement in extramarital affairs and emotional torture...

401. The applicant and sponsor in this matter stated they cannot be separated, yet one week after the statement, the sponsor departed Australia and applied for divorce. The sponsor claimed that the reason for divorce is that the applicant did not agree to cohabitation with him, as his wife.

402. The sponsor divorced the applicant at his will, as referred to previously.

403. The article by Rahman, Giedraitis and Akhtar states that illicit love provoked both husbands and wives in the study to accelerate the dissolution process. The majority of divorcees have tried not to divorce their husbands as they are afraid of the social stigma as 'bad women'.

404. Further, the average duration of the divorce was six years when the study was conducted. Within this time about 30% of the divorcees got remarried. The majority could not go for remarriage because of the social stigma as a divorcee.

405. In this case, however, the applicant married her first husband, [Mr B], in Bangladesh on 12 May 2012. [Mr B] divorced the applicant on 4 January 2015. The applicant married [Mr C] on 5 February 2015 in [City 1].
406. In this case, the divorce was a little over one month before the applicant married [Mr C], compared to the six year average gap in Bangladesh, thus providing less time to be subjected to social stigma.
407. Further, the applicant has been in Australia from 30 December 2012 and is still in Australia. As a result, she has not been subjected to the stigma of divorce in Bangladesh at all.
408. Furthermore, she has been married to her second husband, [Mr C], from 5 February 2015, whilst living in Australia.
409. Moreover, the applicant and the sponsor have had two children, [Child 1], born [Date of birth deleted], and [Child 2], born [Date of birth deleted], and they have been living in Australia. They are a functioning family with the mother, father and children living together.
410. The article also states that the divorcees who did not get remarried were leading a disappointed life. They reported that people in society blamed them for the divorce and considered them as 'bad woman.' By comparison, the applicant has remarried.
411. The article indicates that the divorcees, who did not get remarried, to avoid such situations, usually remained inside the home and passed the time. Many divorcees informed that they felt dependent on society. Their divorcee status led to them suffering from loneliness in their social life. Again, in comparison, the applicant is married.
412. The majority of the divorcees did not remarry but wanted to get remarried. They were deeply concerned about many social economic conditions: dowry, children from the previous family, financial inability to maintain expenses of remarriage, and social scandal. Further, after separation many of them got mental shocks. They could not restore their impaired personality due to divorce from their husbands. Also, some had an inability to produce male issue which dismantled their marital lives. The applicant has produced two male heirs. On the evidence before the Tribunal, the applicant will not be exposed to the issue of not being able to produce male issue.
413. The Tribunal finds that overall the applicant's situation can be considered as quite different to a divorced woman in Bangladesh, and her situation has been, and will continue to be superior to the women in Bangladesh who have been divorced there. There should be no reason for her to be exposed to the social stigma of a divorced woman, as she has re-married, and has two sons.

414. Cancellation

415. A possible consequence of a cancellation decision can be the following:
- 416. • Indefinite detention is a likely consequence of the cancellation decision, if a person cannot be removed from Australia consistently with Australia's non-refoulement obligations.
 - 417. • There are provisions in the Act which prevent the persons from making a valid application for any visa without the Minister personally intervening.

418. • Upon cancellation, the person would become an unlawful non-citizen (unless the person holds another visa that is in effect) and is liable to be detained under s.189, and liable for removal under s.198.

419. The Tribunal is satisfied that the effect of the information being notified to the Department would have resulted in the visa being refused to [Ms A] because the applicant would not have been able to meet the definition of 'spouse' in s.5F of the Act and in r.1.15A of the Regulations and the key provisions for the grant of the spouse visa that rely on that definition.

420. The Tribunal has decided that there was non-compliance by the applicant in the way described in the notice given under s.107 of the Act. Further, having regard to all the relevant circumstances, as discussed above, the Tribunal concludes that the visa should be cancelled.

421. **DECISION**

422. The Tribunal affirms the decision to cancel the applicant's Subclass 100 (Spouse) visa.

423.

424. Robert Wilson

425. Member

ATTACHMENT – *Migration Act 1958* (extracts)

5 Interpretation

- (1) In this Act, unless the contrary intention appears:
- bogus document**, in relation to a person, means a document that the Minister reasonably suspects is a document that:
- (a) purports to have been, but was not, issued in respect of the person; or
 - (b) is counterfeit or has been altered by a person who does not have authority to do so; or
 - (c) was obtained because of a false or misleading statement, whether or not made knowingly.

97 Interpretation

In this Subdivision:

application form, in relation to a non-citizen, means a form on which a non-citizen applies for a visa, being a form that regulations made for the purposes of section 46 allow to be used for making the application.

passenger card has the meaning given by subsection 506(2) and, for the purposes of section 115, includes any document provided for by regulations under paragraph 504(1)(c).

Note: **Bogus document** is defined in subsection 5(1).

98 Completion of visa application

A non-citizen who does not fill in his or her application form or passenger card is taken to do so if he or she causes it to be filled in or if it is otherwise filled in on his or her behalf.

99 Information is answer

Any information that a non-citizen gives or provides, causes to be given or provided, or that is given or provided on his or her behalf, to the Minister, an officer, an authorised system, a person or the Tribunal, or the Immigration Assessment authority, reviewing a decision under this Act in relation to the non-citizen's application for a visa is taken for the purposes of section 100, paragraphs 101(b) and 102(b) and sections 104 and 105 to be an answer to a question in the non-citizen's application form, whether the information is given or provided orally or in writing and whether at an interview or otherwise.

100 Incorrect answers

For the purposes of this Subdivision, an answer to a question is incorrect even though the person who gave or provided the answer, or caused the answer to be given or provided, did not know that it was incorrect.

104 Changes in circumstances to be notified

- (1) If circumstances change so that an answer to a question on a non-citizen's application form or an answer under this section is incorrect in the new circumstances, he or she must, as soon as practicable, inform an officer in writing of the new circumstances and of the correct answer in them.
- (2) If the applicant is in Australia at the time the visa is granted, subsection (1) only applies to changes in circumstance before the visa is granted.
- (3) If the applicant is outside Australia at the time the visa is granted, subsection (1) only applies to changes in circumstances after the application and before the applicant is immigration cleared.
- (4) Subsection (1) applies despite the grant of any visa.

107 Notice of incorrect applications

- (1) If the Minister considers that the holder of a visa who has been immigration cleared (whether or not because of that visa) did not comply with section 101, 102, 103, 104 or 105 or with subsection (2) in a response to a notice under this section, the Minister may give the holder a notice:
 - (a) giving particulars of the possible non-compliance; and
 - (b) stating that, within a period stated in the notice as mentioned in subsection (1A), the holder may give the Minister a written response to the notice that:
 - (i) if the holder disputes that there was non-compliance:

- (A) shows that there was compliance; and
 - (B) in case the Minister decides under section 108 that, in spite of the statement under sub-subparagraph (A), there was non-compliance—shows cause why the visa should not be cancelled; or
- (ii) if the holder accepts that there was non-compliance:
 - (A) give reasons for the non-compliance; and
 - (B) shows cause why the visa should not be cancelled; and
- (c) stating that the Minister will consider cancelling the visa:
 - (i) if the holder gives the Minister oral or written notice, within the period stated as mentioned in subsection (1A), that he or she will not give a written response—when that notice is given; or
 - (ii) if the holder gives the Minister a written response within that period—when the response is given; or
 - (iii) otherwise—at the end of that period; and
- (d) setting out the effect of sections 108, 109, 111 and 112; and
- (e) informing the holder that the holder's obligations under section 104 or 105 are not affected by the notice under this section; and
- (f) requiring the holder:
 - (i) to tell the Minister the address at which the holder is living; and
 - (ii) if the holder changes that address before the Minister notifies the holder of the Minister's decision on whether there was non-compliance by the holder—to tell the Minister the changed address.
- (1A) The period to be stated in the notice under subsection (1) must be:
 - (a) in respect of the holder of a temporary visa—the period prescribed by the regulations or, if no period is prescribed, a reasonable period; or
 - (b) otherwise—14 days.
- (1B) Regulations prescribing a period for the purposes of paragraph (1A)(a) may prescribe different periods and state when a particular period is to apply, which, without limiting the generality of the power, may be to:
 - (a) visas of a stated class; or
 - (b) visa holders in stated circumstances; or
 - (c) visa holders in a stated class of people (who may be visa holders in a particular place); or
 - (d) visa holders in a stated class of people (who may be visa holders in a particular place) in stated circumstances.
- (2) If the visa holder responds to the notice, he or she must do so without making any incorrect statement.

108 Decision about non-compliance

The Minister is to:

- (a) consider any response given by a visa holder in the way required by paragraph 107(1)(b); and
- (b) decide whether there was non-compliance by the visa holder in the way described in the notice.

109 Cancellation of visa if information incorrect

- (1) The Minister, after:
 - (a) deciding under section 108 that there was non-compliance by the holder of a visa; and
 - (b) considering any response to the notice about the non-compliance given in a way required by paragraph 107(1)(b); and
 - (c) having regard to any prescribed circumstances;
 may cancel the visa.
- (2) If the Minister may cancel a visa under subsection (1), the Minister must do so if there exist circumstances declared by the regulations to be circumstances in which a visa must be cancelled.